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PRISONS PROJECTIONS: CAN THE UNITED STATES KEEP PACE?

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL SPENDING, BUDGET, AND ACCOUNTING

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

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PRISONS PROJECTIONS: CAN THE UNITED STATES KEEP PACE?

TUESDAY, JULY 21, 1987

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL SPENDING,
BUDGET, AND ACCOUNTING,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:20 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Lawton Chiles (Chairman of the Subcommittee) presiding.

Present: Senators Chiles and Graham.

OPENING STATEMENT OF SENATOR CHILES

Senator CHILES. Good afternoon. We will convene our hearings and start off by saying that prisons are an American invention. In 1790, the Pennsylvania legislature opted for incarceration as a form of punishment instead of the traditional financial, corporal, and capital punishment used throughout Europe for criminal punishment.

This resulted in the first prison in America—the Walnut Street Prison in Philadelphia. The prison was soon judged a success as measured by the decline in crime statistics, but by 1817 the Walnut Street Prison was extremely overcrowded, and so it began.

The United States has been playing "catch-up" ever since, but never before has the country been faced with demands for more prison space than we are today. Less than a decade ago our U.S. prison system was only 3 percent over capacity. Today the system is 56 percent over capacity, 58 of the 59 Federal facilities are overcrowded, the one exception being the maximum security prison at Marion, Illinois, which was rated at 12 percent under capacity.

The demands on this already overburdened system are about to skyrocket. The effects of the Comprehensive Crime Control Act of 1984, the Sentencing Guidelines and the Anti-Drug Abuse Act of 1986 will be significant as shown by the two charts that we have. The mandatory sentences and uniform sentencing in these statutes will have a dramatic effect. Based on the highest projections of the Sentencing Commission, the current 43,000 U.S. prison population could increase as high as 118,000 by 1997 and 156,000 by the year 2002, and that is 10 to 15 years down the road.

What are the answers? Well, the obvious are that we could spend up to $6 billion in construction costs and $1 billion annually in additional operation and maintenance over the next 10 years for an

expanded system to meet the demand. Or, of course, we can continue to let prisoners out the back door to accommodate those that are coming in the front door. Neither of these are practical or politically accepted to a lot of Americans, including many members of the Congress.

The Administration and the Congress have continued to increase crime and drug enforcement dollars over the years. We have even given some additional dollars to the Justice Department and to the Judiciary, but we have not kept pace with the dollars for prisons.

Dollars cannot do it all. We know that there has got to be a blend of dollars with alternatives in a defined overall U.S. prison policy. There are currently great gaps in such a policy.

Today, the Subcommittee will begin a series of hearings on U.S. prisons. We hope to start trying to see how we can define such an overall policy, and we will concentrate on the prison population projections for the future and the related cost implications. We will also begin today to discuss alternatives and their cost effects, especially the use of under-utilized military facilities as prisons. At future hearings we are going to examine other alternative sites as well as alternatives to incarceration.

I want to keep my remarks brief now to accommodate time for our distinguished witnesses. I thank all of you. I know many of you made special efforts to be with us today and we are most grateful.

We are delighted to have as our lead-off witness our former Chief Justice Warren Burger, who has a long-term interest in prison reform. I understand that goes back, Mr. Justice, since your boyhood days in visiting a prison in Minnesota.

We thank you that you have given us some of your time today and some of your wisdom on this subject. We will call on you now.

TESTIMONY OF HON. WARREN BURGER, CHIEF JUSTICE [RETIRED], SUPREME COURT OF THE UNITED STATES

Chief Justice BURGER. Thank you, Mr. Chairman.

Your reference to that boyhood experience had passed out of my mind until you mentioned it. Minnesota had built, when I was a small boy, what was regarded as the finest modern prison in the United States. As a boy 15 years old working for a boy's camp, it was one of my tasks to take them up the river in a big canoe and camp overnight and take the youngsters younger than I through the prison.

I repeat, it was the most modern and probably the most expensive institution in the country, but at that time prisoners were not allowed to speak to each other, and that is where developed this custom—the source of which is forgotten by many people—of prisoners speaking to each other the way a ventriloquist does, out of the side of their mouths without having their lips move.

It did not make any sense to me when I was 15 years old and it does not make any sense to me now to run a prison the way they did. Now, fortunately, it has improved.

Let me go back a little bit in terms. I surely cannot qualify as an expert, but as a concerned person. The book I have, do not be dismayed, Mr. Chairman, is not testimony. It is an assembly of all I

have had to say over a period of 32 years on this subject of corrections.

The Minnesota experience of two different summers impressed itself on me that the structure is not the important thing. When I became assistant attorney general, although I was in civil litigation and international litigation, James Bennett, one of the great, great corrections people in the history of this country, was the head of the Prison Bureau and got me interested.

I visited Federal and State prisons in this country. I then began, when I was in Europe for meetings or lectures while I was on the Court of Appeals, and even since then when I was on the Supreme Court, to visit institutions in the other countries. I had been encouraged by him to go to the Scandinavian countries because they had become the model on which the Federal system was built, and it is why the Federal system comes nearer being what an institution ought to be than any other, except a few of the States that have used the same model.

I would start with the basic proposition that it must be the fixed policy of society to try to have a system which will make this inmate be a better person when he or she comes out than when he or she went in. I would think that is simply not debatable.

At the present time, I regret to say, it is not so. I do not think anyone knows the percentages. Whatever they are, they are too high. I would say possibly a majority of the people who come out of penal institutions in this country are worse people than when they went in.

Now, why is that so? I hasten to say I would not apply this to the Federal system or some of the States which have used the Federal system and the Scandinavian system as a pattern.

Let me offer a word about what I mean by describing those systems. Three years ago I fulfilled something I had wanted to do for years. We had a team of American leaders go to the Scandinavian countries. I was able to persuade Senator Mark Hatfield of the Senate, Robert Kastenmeier of the House; I invited Lane Kirkland of the AFL-CIO and was pleasantly surprised when he sent his general counsel; we had the head of the Federal Prison Bureau, Norman Carlson; a representative of the Department of Justice; and Dwight Elliott of George Washington University had agreed to have the university be the official sponsor and all the cost was private. We had the Vice President of Weyerhaeuser Timber Company and the President of the National Can Company.

So it was a very representative group of people.

By this time, I must say—having said some things about Minnesota—the picture had begun to change. William Norris, the President of Control Data Corporation, now Chairman, had established a program in the Minnesota prison where he had somewhere ranging from 150 to 200 prisoners who had been identified by testing and then trained at the expense of Control Data and they were assembling a particular type of computers.

The interesting thing was that Mr. Norris told me once that in the five plants where they produced this computer, they had fewer returns, fewer complaints about the ones done in the prison than anywhere else.

We have a man in Washington who has done that—William Fitzgerald. You may know him, a businessman who has used prisoners from both Virginia and Maryland. These men have seen what can be done with a system patterned again on the Scandinavian system where everyone works. Everyone works and everyone gets paid something. They do not get the union scale, but if they have a family at home, some of it is sent home.

Some of it is put into a bank account so that they may have it when they get out, instead of that ancient system that I have seen in movies when I was younger where the warden takes the man to the door and hands him $10 or $20 and says, go about your life.

It will not work that way. They have got to come out better, at least better in the sense that they have got some hope and some training, something salable, whether it is taking an illiterate person and making him or her literate—there are people coming out of our prisons who could not work in a filling station because they would not know how to make change or would not know how to measure the gas pump very accurately.

The cost is enormous. You have the figures, and as you know—I suppose these graphs show it in part—we have more than doubled the prison population in the last 10 years, and the Federal Government has given those figures. They have gone up enormously.

I do not know, although while I was on the Court of Appeals I occasionally sat as a trial judge and sentenced people. I found that it was the most difficult task that any judge can ever undertake, any human being can ever undertake; I had been in enough of these institutions to be concerned about what was going to happen to them after they got there, and what was going to happen, for the most part, was not good.

Now, just think of it. The cost of maintaining a prisoner, averaged through the country, is in round figures close to sending a young person through the highest priced graduate school—not undergraduate; Harvard Medical School, you name it. And we are not getting a return on the investment. I would say that that is a tuition cost that we are paying for prisons and prisoners that is intolerable, and there is a way to cut it down.

That is to have—and it is an over-simplification, I recognize—not warehouses but factories with fences around them. Let me give just one example in Sweden. About 40 miles out of Stockholm is a small prison—that is a great convenience in a country that can afford small prisons—I think 500 inmates is the limit, and that is raised from the previous limit of 300 when I first began to visit there 25 years ago.

They make prefabricated houses, all the components, everything except the plumbing. These prefabricated parts are carried to a site. The foundation has been put in, the plumbing equipment is there, the piping, and the house is put up in a matter of less than 24 hours. I asked the Swedish officials who were taking me around, how do you take care of this with the unions? And he said, what do you mean? The unions run Sweden, so we have no problem.

This is a comprehensive view, the social objective that is accepted widely. This is generally true in Denmark and in Finland, although I have seen less of Finland. Norway, with its smaller population, does not have nearly the problem.

I would, in closing, say that I would be glad to visit with members of your staff at any time, Mr. Chairman. A great many, many hours of work has gone into the contents of this book over a period of 30 years.

Senator CHILES. I am sure there has, and we would like to avail ourselves of that opportunity.

Chief Justice BURGER. There are some interesting things which I have discovered in visiting prisons. And I have visited prisons in every country of Europe except Portugal and Spain, where at the time I was visiting they were not very hospitable about it, but that includes the Soviet Union, China and Japan, and we can learn a great deal from these people.

When we discussed this once at a conference, I was challenged by someone who said, do you mean you would have forced work like forced labor in Nazi Germany? My answer was no, not at all like Nazi Germany. You can call it what you want.

I think it could be enforced, among other things, by having certain privileges in the institution, including perhaps two different dining rooms, and those who cooperated would get one set of privileges, those who did not would not share in those privileges.

In some of the prisons in this country where they have a majority of younger men, under 30—85 percent of them under age 30—there is no athletic facility for them to work off their energies, and if we have the judgment to plan it so that they will work all day and then they can play on playing fields—and let people call them country clubs if they want—I think you will have a great reduction in prison riots. They will be too tired by the end of the week, the way most working people are, to go out rioting.

I would be glad to yield for any questions, except I have taken too much of your time already, Senator.

Senator CHILES. Well, no you have not, but you have anticipated two or three of the questions that I had all ready, especially when you talked about the factories and letting the prisoners produce something.

But I wanted to ask you, you have been an outspoken proponent of such prison reforms as expansion of vocational training and prison industries. As you know, I sponsored an amendment to the Anti-Drug Abuse Act which resulted in housing of Federal prisoners in some military facilities where they are available, considering that these prisoners could be used on military bases in a productive capacity.

In fact, at Eglin Air Force Base, which is in my State, we have had a minimum detention facility there for many years. It is one of the favorite things that is there, in regard to the commanding general, because they do all of the maintenance work and the lawn work, the grounds keeping. He says that is demeaning sometimes to a military man. It is like KP and he is sort of required to do it.

The prisoners enjoy the opportunity to get outside and to have the freedom of the whole base grounds, which is a huge military installation. It seems to work very well and it seems to be cost effective. Do you think that this could be a cost effective means of dealing with prisoners?

Chief Justice BURGER. It is one of them, Mr. Chairman. What would be the ideal—and, of course, it is always hard to achieve the

ideal—is substantive work for them where the inmate can see what it is that he has created, as in the Swedish prison where they make the houses. I do not know whether they make a profit, but it certainly reduces the cost of maintaining institutions in Sweden.

The work, when it can be done, should be meaningful work, and I think, from talking to Lane Kirkland and other labor leaders in this country, that the labor movement in this country is ready to cooperate with that, if anything, I think maybe a little bit more than the business community. I am not sure of that.

By the way, having mentioned Bill Norris and Bill Fitzgerald as men who have been farsighted in the business world, in your State Jack Eckard has done one of the most outstanding jobs in this country in this century, and you know the story of what he has done——

Senator CHILES. Yes, sir, I do.

Chief Justice BURGER [continuing]. In having prisoners in your State prisons work. So I would add to the Federal system and to the Swedish, the example of Control Data and Jack Eckard and Bill Fitzgerald.

Senator CHILES. Well, we thank you very much for being our lead-off witness in our hearing.

Chief Justice BURGER. It was a pleasure to be here, Senator. Thank you.

Senator CHILES. Thank you, sir.

Now, our next witness will be the Honorable Judge William Wilkins of the 4th Circuit, U.S. Court of Appeals, who also Chaired the Sentencing Guidelines Commission, the U.S. Sentencing Commission, I assume that its name was.

And with him is Judge Stephen Breyer, Commissioner, Helen Corrothers, and Judge George McKinnon, also a Commissioner of the U.S. Sentencing Commission.

Judge Wilkins, we are delighted to have you and the other members of the Commission, and we thank you very much for your appearance here today.

TESTIMONY OF JUDGE WILLIAM W. WILKINS, JR., CHAIRMAN; JUDGE STEPHEN G. BREYER, COMMISSIONER; JUDGE GEORGE McKINNON, COMMISSIONER; HELEN G. CORROTHERS, COMMISSIONER; AND WILLIAM M. RHODES, RESEARCH DIRECTOR, ALL FROM THE U.S. SENTENCING COMMISSION [1]

Judge WILKINS. Thank you very much, Mr. Chairman.

You have recognized the other three members of the Sentencing Commission who are with me today. I would also like to introduce to the Committee our Director of Research, Mr. Bill Rhodes, and after I make a few introductory remarks I would like to allow Mr. Rhodes to talk in some specifics about the prison population analysis which the U.S. Sentencing Commission, working in cooperation with the Bureau of Prisons has been conducting over a number of months. Mr. Rhodes will also talk in detail about the charts that have been presented.

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[1] See p. 31 for Mr. Rhodes' prepared statement.

I might say at the outset that sentencing and sentencing guidelines must be one of the most controversial topics that one can find in searching the criminal justice area, and we have certainly experienced that over the last 18 months during which we have been involved in drafting sentencing guidelines.

People who are involved in sentencing and care about sentencing, many individuals—professors and judges and others who study this area—often have very fixed and inflexible opinions about the methods that should be used, and if you do not agree entirely with many of these individuals, then suddenly you are subject to being characterized as too tough on crime, or you are too soft on crime, or your methodology is unsound or your underlying sentencing principles are unworthy of guiding the direction of your work, and so forth.

Nevertheless, the majority of us have recognized that all of the efforts put into this work are worthwhile in the long run, because we truly believe that we will offer, with these guidelines, significant improvements in our criminal justice system.

As you know, Mr. Chairman, today the decision of whether or not an individual goes to prison or not, and if they go to prison, for how long, by and large depends on the luck of the draw in the assignment of the judge, rather than other important factors. And because of the unwarranted disparity in our Federal sentencing system, throughout this Nation there is no certainty of punishment. Because of unwarranted disparity, many times fairness—either to the defendant or to the victim—is missing from the criminal justice system.

These guidelines, in my judgment, will achieve the principal statutory goal that the Congress set for us, and that is to provide a system where similar defendants who commit similar crimes are sentenced in a similar fashion. These guidelines that we submitted to the Congress in April represent the collective efforts of six of the seven Commissioners who have studied together, listened, debated and come to a decision resulting in the product that was submitted recently.

I might say, the process that we followed has been one of caution. It has been a methodical, step-by-step process as we have moved from the beginning, some 18-plus months ago, to the submission of guidelines to the Congress in April. All of our Commission meetings have been open to the public, and we have held a series of public hearings here in Washington and around this country on vital issues that we had to resolve as we began to produce this document.

It has been an evolutionary process as we have moved from one intended draft to another, to publication of a draft, to public hearings, to public comment, to responding to that with another draft, further comments, hearings and revisions, and as I say, resulting in the submission to the Congress of the initial set of guidelines.

One of the important things we did, I think, was to develop working groups of judges, prosecuting attorneys and defense attorneys, and probation officers from the field who came to work with us on a topic-by-topic basis and brought to the Commission's work this experience from the field that we so desperately needed if we were

going to produce guidelines that were practical and workable in the real world.

Before we talk about the prison population projection, let me just say one word about the development of these guildelines, and the struggle between two important, competing principles. Those are the principles of simplicity versus complexity. I am sure any guidelines commission at the state level that has labored with this task of trying to develop sentencing guidelines has found that there is a great struggle between these two conflicting principles between which we must always try to find the right balance.

Simplicity has a great virtue because everybody can understand the product. It is workable, it is practical and it is easy to project prison populations when you have a very simple model. But it also has a vice, because it lumps large groups of individuals who have dissimilar characteristics into the same category; therefore, the elimination of unfairness in sentencing does not occur.

And so recognizing that, we move down the spectrum towards this principle of complexity that also has a great virtue. And that is, it allows judges to make very fine distinctions and tailor individual sentences for the individual defendant, because there are so many various distinctions within the guidelines. But complexity has a great fault, and that is, people cannot understand the product. It is unworkable and it becomes impractical, and indeed, there are so many distinctions to be made that all of a sudden disparity is injected back into the system.

So we have been struggling between those competing principles. The various drafts that we produced sometimes moved to the side of simplicity, sometimes too far to complexity. But I believe this last draft that Congress now has under consideration strikes the right balance. The reason I say that is because of the approach that we used in drafting these guidelines, a large measure of which was due to the extensive research that was done by Research Director William Rhodes and his staff at the Sentencing Commission.

Rather than draft guidelines based upon our impression of what the real world is like, we drafted guidelines based upon empirical data that was extracted from the meticulous and laborious task of studying over 10,500 pre-sentence reports of actual cases. Through this methodology, we in effect let hundreds of judges who have made thousands of decisions tell us what truly are factors that they consider relevant in sentencing, rather than deciding factors based entirely upon our personal experiences and impressions as commissioners.

We used this as a touchstone on which to write guidelines, also looking to any distinctions made in the particular criminal statutes as enacted by the Congress. So, our starting point was to use the relevant factors from real world sentences.

We also knew what average sentence types and lengths were in the real world, and we knew the relationship of one factor to the other. For example, how much does it increase the sentence for a robber to be armed with a weapon as opposed to one who is unarmed, and so forth? We did not mirror actual averages in the real world, but when we made a decision, when we moved in one direction or the other from the empirical data—and we had to make

hundreds of such decisions—we knew where our starting point was and we knew the direction that we were going and why.

We never made a decision based solely upon what we thought it would do to prison population. We determined early on that that was not the appropriate way to proceed, if we were seeking that elusive goal called justice, to put an artificial constraint upon what we were doing. We also did not feel a proper reading of the statute and legislative history required such a procedure.

But we kept our eye on prison impact by using data from the real world. So when we moved in a given direction we knew what effect, generally speaking, it was going to have, and we knew before it was over that we were not going to drastically or suddenly increase prison population. Nevertheless, as you will see in just a moment from what Director Rhodes will tell us, there will be some significant increases over the next few years, most of which are attributable to factors other than the sentencing guidelines.

Thank you very much, Mr. Chairman.

Senator CHILES. I thank you very much, and I think it says something about the balance of the Commission here when I see you as a former counsel in the Judiciary to Senator Thurmond and I see Judge Breyer, who was also a former counsel for Senator Kennedy. I see that we put together a good representative mix there. And of course, Commissioner Corrothers, with your experience both in the military and as a warden, certainly you brought that to the Commission. And Judge McKinnon, we know of your experience which you have had in the District here, so we are delighted to see the kind of mix that you had, and it goes to what you said of trying to get a representative group.

Mr. Rhodes.

Mr. RHODES. The Sentencing Commission worked very closely with the Bureau of Prisons and developed a detailed model of future prison populations. As the Research Director at the Commission, I was primarily responsible on the staff for that model and making those projections, and I am pleased to be able to tell you the outcome of those projections.

I am also pleased to find that when I arrived there was a chart here which illustrates the projections that came out of our model. So, I will turn to those projections and, in time, point out to you where we think the prison populations are going.

First of all, let me tell you a little bit about the model. Clearly, projecting future prison populations is an inexact science. One has to make many assumptions about what the future is going to look like, and we necessarily made a host of them in our study.

For example, we had to make assumptions about future prosecution trends. That is tough to do. It depends upon the Administration in office, it depends upon the policies of that Administration, what that Administration directs U.S. Attorneys to do, etc.

Under a guideline scheme, the impact of those guidelines certainly depends upon the compliance one gets with the guidelines. And while we expect that compliance to be fairly high, we know it will not be 100 percent. The impact depends as well upon what plea negotiations are going to look like, under the guidelines and in general, in the future. We know what they look like now, and we understand some of the needs of plea negotiations and we suspect that

the future is going to see plea negotiations, but we are not sure precisely what they are going to look like. So we had to make some assumptions about what is going to happen in the future in regard to such factors.

In addition to that we faced two major problems; one was in the form of the Anti-Drug Abuse bill of 1986, and the other, of course, was in the form of the "career offender" provision of the Crime Control Act of 1984. The former increases sentences markedly for convicted drug offenders. The latter increases sentences for certain repeat offenders.

We can see in the law a Congressional directive that those sentences are supposed to increase. We do not know in practice, in fact, how much that increase will be. Because it is so difficult to project future prison populations, given the numerous assumptions that have to be made, we made a number of projections using alternative scenarios. We tested them all to see how sensitive our projections were to the particular assumptions used in each scenario.

Regardless of the assumptions that we employed, we reached a conclusion that looks pretty sound, and that is this. With or without sentencing guidelines, the Federal criminal justice system must brace itself for expanding demands on the prison system.

We worked very closely with the Bureau of Prisons in developing these assumptions and our research methodology. We have also discussed the assumptions with other outsiders, including GAO. No one agrees with all the assumptions we have employed, and consequently, no one would agree with the exact projections that we have made.

On the other hand, we have not encountered strong resistance to our general conclusions that future prison increases can be attributed primarily to increases in criminal prosecutions, the Anti-Drug Abuse Act and the career offender provisions. The guidelines themselves make a fairly marginal impact beyond those other three causes.

The Crime Control Act suggests that probation could be reduced where appropriate under sentencing guidelines, and indeed straight probation terms will be reduced under the guidelines. For crimes of violence, for the distribution of drugs, and for some other types of offenses, the effect is straightforward; fewer offenders will receive probation under the sentencing guidelines. For other crimes, essentially property crimes, the effect is more complicated. There will be fewer straight probation terms—that is, terms in which offenders will receive probation with no condition of incarceration.

However, this reduction in straight probation terms will be at least partly offset by an increase in the use of probation with a condition of intermittent confinement, which will primarily be spent in community correctional facilities and other minimum security facilities at nights and/or on weekends. We do not expect, then, for property crimes, which constitute the bulk of the Federal crimes, other than drug offenses, that the overall rate of probation sentences will significantly decrease in the future.

Although the Commission has attempted to reduce straight probation sentences in a number of areas, as I have said, probation sentences will certainly not disappear under the guidelines. I want

to give you some examples. An unsophisticated $10,000 bank embezzlement will not require any confinement if the defendant accepts his responsibility for the offense.

Even a relatively sophisticated, $50,000 bank embezzlement will result in no more than 6 months of intermittent confinement, again, if the offender accepts his responsibility. As was true in the past, first time offenders who have been convicted of the least serious crimes will be placed on probation under the guidelines.

Different from the past is that some offenders—including repeat, non-indent offenders and first-time offenders who have committed serious violations—will not, under these guidelines, escape prison entirely. They will serve some form of confinement. We anticipate that confinement typically will be in a minimum security facility.

What are the implications for the prisons of this reduction in probation? We believe the Bureau of Prisons will be forced to house an increased number of offenders for a short time in community corrections and other minimum security prisons. Right now, while the numbers are estimates, the Bureau of Prison houses approximately 800 people at any one time who are either direct commitments to community corrections facilities, or who are in a community corrections facility as a consequence of a condition of probation. We expect that under the guidelines, that type of confinement—that is, a direct confinement from the court or as a condition of probation—will increase to about 3,000 people in minimum security facilities at any one time.

Average time served for most violent crimes will increase under these guidelines. Although the career offender provision accounts for some of this increase, clearly the increase also can be attributed to a policy decision by the Sentencing Commission to increase the sentences for violent crimes.

The average time served for drug law violations will increase dramatically under these guidelines. I want to give some examples to illustrate that increase. Currently the average time served for a conviction of a drug law violation is 23 months. These are drug distribution offenses. Had the drug law been in effect when those offenders were sentenced, we project that they would serve an average of 48 months. Had the career offender provision been in effect, the 48 months would be increased to about 57 months on average. Finally, the guidelines make an incremental effect, increasing the sentence to about 60 months—somewhat less than 60 months. To repeat then, that is an increase in the average sentence for drug offenders from about 23 months under recent past practice to somewhat less than 60 months, largely attributable to the new drug law, partially attributable to the career offender provision, and marginally attributable to the guidelines.

When the Commission was constrained, neither by the drug law nor the career offender provision, average prison sentences under the guidelines are similar to the average prison sentences served currently.

There are some exceptions to that. For example, the Commission deemed that in the future, income tax violators would serve more time under the guidelines. That decision was based on a desire to rationalize the sentencing structure, so that income tax violators

serve time that is similar in length to the time served by other offenders convicted of other frauds of like amount.

These changes in average prison sentences portend the impact that the guidelines have for the prison system. I will now turn my attention to those impacts and use the charts you have on display to illustrate some of the results.

Future prison demands will depend importantly on the number of future convictions, so the first step in our prison projections was to make some estimates of what future convictions looked like. We made projections for 5, 10, and 15-year periods; hence, one can see bars on the tables for 1992, 1997 and 2002.

Our projections were based both upon a low-growth scenario for future prosecutions—hence the chart on the right—and a high-growth scenario for future prosecutions (the other chart on the left). Those scenarios were based upon the trends that we have seen over the last 15 years in criminal convictions.

Even in a low-growth scenario, prison population is projected to grow dramatically. Current prison population is about 42,000 or 43,000. We project that prison demands will increase to 72,000 by 1992, and to 92,000 by 1997. These are in the low-growth projections, and they are consistent with the upper bars that one sees in the figure on the right.

Adopting a high-growth scenario, we project the population to increase to 79,000 in 1992 and to 118,000 in 1997. This is to say that it would be reasonable to anticipate a doubling, or even a tripling in the Federal prison population over the decade.

Furthermore, the low-growth projections are not much lower, and the high-growth projections are not much higher when we introduce alternative assumptions into the model. To repeat my earlier statement, the Federal criminal justice system must brace itself for expanding demands on the prison system.

It is very important to identify the reasons for this growth. First, prison populations have grown by 83 percent during the present Administration. We project that this growth would continue at a somewhat diminished rate over the decade. Thus, even without any new laws—new drug laws, career offender provisions or guidelines—we would project that the demands on the Federal prisons would grow between 45 and 88 percent as a result of natural, baseline growth in the rates of prosecutions and convictions.

Second, the Anti-Drug Abuse Act of 1986 imposes mandatory minimum terms on most drug violators. It increases the maximum for most other drug violators, and it defines new conditions that require enhanced sentences for crimes that are committed under certain conditions.

By 1992 the drug law alone is projected to increase demands on the prisons by about 18 percent over the base line. That is the bottom block in these pictures. The demand is expected to increase by 38 percent, and that is just attributable to the drug laws, during the next 5 years; that is, by 1997.

Third, the career offender provision of the Crime Control Act of 1984 requires a term at or near the statutory maximum for certain repeat offenders who are convicted of drug law violations or violent crimes. This provision has an additional effect on the prison population, increasing it by about 2 percent in 1992, by about 6 percent

in 1997, and by increasing amounts over time. The increasing amounts are attributable to the fact that career offenders already serve lengthy sentences, so we do not see that impact for 10, 15 or 20 years into the future.

Senator CHILES. Mr. Rhodes, I am going to take your entire statement and put it in the record.[1] I want to have time to ask just a few questions, and our time is going to get short because I am afraid I might have to go to an Appropriations Committee hearing. So I would like to take your statement in full and put it in the record.

I thank you very much for your research and the work that you have done.

Judge, if I could ask you, the Sentencing Commission does endorse some alternatives to confinement. What are those alternatives and what are the relative costs associated with them?

Judge WILKINS. Well, I do not know the relative costs. I know that we certainly do endorse and advocate alternatives to confinement in many circumstances. It is much cheaper than incarceration.

We have done a great deal of looking into what is happening in some of the States in the way of creative alternatives. I think some of the States are ahead of the federal system in this area, particularly in the area of electronic monitoring, for example. Some States—even nearby States such as Virginia—have used this technique very successfully.

I think it is something that we need to continue to explore. It is not something, however, the Sentencing Commission on its own could bring about, unless we know that there are resources available for the courts and probation offices to use a particular type of alternative.

What the Sentencing Commission has done, however, is strongly recommend—and we took our lead from the statute itself—the use of intermittent terms of confinement as a condition of probation. Rather than individuals being sentenced to a Federal institution, we have proposed allowing some type of intermittent confinement as a condition of probation. We believe this would provide certainty and sufficiency of punishment, but would also allow an individual to remain in the community, serving weekends or serving nights in a community confinement center.

Senator CHILES. I notice that the nature and frequency of plea bargaining may change under the new laws. In the Commission's report, though, it refers to sentence bargaining. Can you explain to me the difference between plea bargaining and sentence bargaining?

Judge WILKINS. Well, I guess plea bargaining is a general term that could include sentence bargaining. We do not anticipate very much sentence bargaining under the guidelines, nor is there much sentence bargaining in the Federal system today.

We are going to monitor plea agreements sentencing very closely, because we took a very cautious approach in the initial guidelines to this very difficult and important issue of plea negotiations.

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[1] See p. 31.

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If we had come out with a broad sweeping abolition of plea negotiations in our Federal system, we would stand our justice system on its head overnight. We are just not sure we can or should do that after this long history and tradition of plea negotiations, which I might add, in my judgment, often are legitimate tools of the justice system. The only time that we need to watch plea negotiations and definitely take remedial action is when they are abused, and that does occur.

We have made some significant improvements in the guidelines in this area, because the guidelines are going to require several things. One is that the relevant facts of the actual offense be stated to the court in writing. That is not necessarily true today, and that is where I think some of the criticisms of plea negotiations occur. Individuals commit armed bank robbery, for example, but during the plea process it is worked out to unarmed bank robbery, and both the defense attorney and the prosecutor behave as if the defendant is an unarmed bank robber rather than an armed bank robber. As a result, it is arguable that a fraud, in effect, is being perpetrated on the court and on the public.

The guidelines will say, let's come up front, state the relevant facts, whatever they may be. Then state whatever the plea negotiation is between the U.S. Attorney and the defense attorney, and then state the reason submitted by the attorneys to the court as being a justifiable reason, which then must be approved by the court. I think this full disclosure will bring a great deal of accountability to the system.

Senator CHILES. Judge Breyer, take off your Commissioner's hat for a moment if you will and put on your judge's hat and tell me what you think, whether judges will depart from the sentencing guidelines, or how frequently they will depart from these guidelines.

Judge BREYER. I did look that up in Minnesota and in Washington, and I think after a period of time, it settled down into a range, I think, under 10 percent.

Senator CHILES. Under 10 percent?

Judge BREYER. Yes. Let me just see if I have the exact numbers right here. I may.

In Minnesota you might want to divide it into the decision about whether you go to prison or not to prison, and there the judges were departing roughly 11 percent of the time. And with respect to the length of the sentence, about 7 percent of the time. The State of Washington had roughly similar statistics.

One cannot predict exactly what the result will be under these guidelines. What the guidelines do is they carve out a heartland. This heartland bears a considerable resemblance in many cases to the average or typical practice now. The guidelines pretty clearly instruct the judge that if you do not have a typical case, you depart.

There are exceptions—race, religion, et cetera.

Senator CHILES. I understand when he departs, then he has to give some reason?

Judge BREYER. He has to give reasons and it will be subject to review by the Court of Appeals for reasonableness.

Senator CHILES. All right. I have a number of other questions that I would like to ask you all, and I would like to know if I could submit a few of them for the record. Our time is just going to force us to kind of go on here because I do not want to cut somebody else off that is here.

Judge WILKINS. Certainly, Mr. Chairman. We would be glad to respond back in writing or any other method you would prefer.

Senator CHILES. Well, we would thank you very much.

I want to thank you all for the work you have done and for your report, which certainly needs to be read and comprehended by the members of the Congress, because part of these, or all of them, are based on laws that we have passed and we better know what our responsibility is going to be coming up for trying to provide for some of the basis of housing people as a result of those laws.

Judge Breyer?

Judge BREYER. I just wanted to underline, Senator, what the Chairman said, that whether or not the guidelines are responsible—and I think they are not—there will be a big increase in prison population, that a future job for the Commission is going to be systematically to catalogue, to investigate and to look into, as your Committee is doing, alternatives.

Senator CHILES. One of the questions I want to ask you is whether you were going to consider alternatives and whether we were going to get some more information from you on that.

Judge BREYER. Yes, and I hope we could work cooperatively with you.

Senator CHILES. Well, we look forward to that, because as we said in the outset, this is our first hearing and we are just taking sort of a quick cut, but we think an awful lot more needs to be done, what the alternatives are, how we are going to deal with these costs, what are other steps that we can take.

We thank you all very much.

Judge WILKINS. Thank you, Mr. Chairman.

Senator CHILES. We are going to get the GAO panel up here and then I am going to have to step down to the Appropriations Committee. So we are going to have to recess just a minute and let me come back.

[Brief recess.]

Mr. HARRIS [presiding]. I am Bob Harris, the Staff Director. We will start taking the testimony and we will have a Senator down presently. Senator Chiles has been delayed, as you know.

TESTIMONY OF WILLIAM J. ANDERSON, ASSISTANT COMPTROLLER GENERAL, GENERAL GOVERNMENT PROGRAMS, U.S. GENERAL ACCOUNTING OFFICE,[1] ACCOMPANIED BY JOHN H. ANDERSON, JR., GROUP DIRECTOR, GENERAL GOVERNMENT DIVISION, AND FRANK T. LAWSON, SUPERVISORY EVALUATOR, CINCINNATI REGIONAL OFFICE

Mr. W. ANDERSON. Thank you, Mr. Harris. I would like to start off by introducing the people at the table with me. To my left is

[1] See p. 39 for Mr. Anderson's prepared statement.

John Anderson. John is a group director responsible for a large body of work that we do in the justice area. To my right is Frank Lawson of our Cincinnati Regional Office.

I am going to summarize my summary and get to the matters that I think are of most concern to Chairman Chiles.

I would say that we have accomplished a couple of major things here today. First, I think we have established that the Sentencing Commission was the bearer of bad news on prison population problems but not the cause of them, considering that the solid black portion of the graph on display represents the projected population increase attributable to the guidelines.

The Commission's projections serve a very effective purpose in putting the spotlight on an emerging problem that we have to be thinking about. I know the Bureau of Prisons is thinking about it. The Congress is going to have to be thinking about it in terms of the fact that there are some significant financial implications associated with the seeming large amount of new construction that the Bureau is going to have to initiate in in coming years.

One thing we do know, and the point was made effectively already, that it is extremely difficult to project population changes with any precision. I am sure in 1978 if you had asked the Bureau of Prisons to project what their population would be in 1980—it was 30,000 in 1978—I do not think they would have said 24,000, a drop of 6,000, or 20 percent over a 2-year period.

There are a lot of variables involved. What we have tried to do for the Committee—and I have a handout [1] and hopefully you have it before you, Mr. Harris—on page 2 of a supplementary fact sheet that we pulled together that highlights the uncertainties and some of the potential problems with this situation.

Page 2 in the handout goes beyond the chart that is on display. It is based on Table 6 in the Sentencing Commission's supplementing report where they take the numbers in the graph that you have on display and they try to incorporate some assumptions regarding the effect of plea negotiations and the effect of departures from the guidelines, so I guess I kind of see them as perhaps even a refinement of what we have on display here.

Now, if you look at page 2, let me just highlight some of the things that address the problem that the Chairman is concerned about. I said they put the spotlight on this whole situation. I think that right now the current official out-year forecasts of the Bureau of Prisons includes a figure—I think it is for 1993—of 55,200. Now, they recognize that that was low and in fact, they have a new larger figure that is going to reflect the impact of the anti-drug abuse legislation.

I understand that they are now talking about a figure that would be, say, 76,000 for 1997. So the Bureau of Prisons as shown on the chart here on page 2, comes up with an estimated total population for 1997 let's say in the range of 75–76,000.

What we tried to do in the second column on page 2 was to calculate if you accept 20 percent overcrowding, which I think is a target that the Bureau would be happy to have today as opposed to

[1] See p. 52.

the current 56 percent overcrowding rate, they would need 63,300 beds; 63,300 beds, overcrowded 20 percent would accommodate their population of 76,000.

In the third column, we tried to calculate what that means in terms of new beds that will be needed. As you can see by my footnote on page 2, I took that 63,300 beds and I subtracted out what they are in the very process of providing right now, 34,500 beds is the number existing and underway. The shortfall, is 28,800 beds.

Now, if you look down the rest of that page, you will see that we have taken the Sentencing Commission's estimates and developed shortfalls for them as well that range, depending on their most optimistic scenario, a 30,500 bed shortage, not too far from the Bureau of Prisons, up to that bottom figure of 69,700 under another set of assumptions.

Translate that into costs, assuming that the entire need was satisfied with new construction. The number we used was $66,000 a bed. We used $66,000 a bed because right now there are 10 major construction projects underway by the Bureau of Prisons scheduled for completion in 1988, 1989 and 1990. We summed the construction costs of those 10 facilities, divided by the number of beds, and we found out that they would be paying about $66,000 a bed.

It seemed a reasonable way to estimate what these additional beds might cost if they were all to be satisfied with new construction. The numbers speak for themselves. At the very low end you have Bureau of Prisons assuming potential new construction costs of, $1.9 billion to meet the 1997 space requirements. And you can see that the other estimates gradually increase as the forecasts get more and more pessimistic until ultimately under one of the Sentencing Commission scenarios, you have potential costs of $4.6 billion.

So I guess what we are saying is that they put the spotlight on something that I know a lot of people are going to have to be concerned about, including the Congress. I kept speaking about what they decided to satisfy with new construction, because the Bureau tries to meets its needs in a number of ways, of which new construction is only one.

They try to use community treatment centers, and indeed, a part of their demand right now is being met that way. They forecast a modest increase in the next couple of years. Perhaps it might be increased further.

They contract out with State and local governments to satisfy some part of their confinement requirements. They have a program of continually trying to expand existing facilities. They currently have several of projects funded or requested that will add another 2,600 beds in that way.

Of most concern to the Chairman, they are also looking to acquire surplus and other properties to the extent that they are available and to the extent that they might meet the Bureau's needs. Now, the Bureau makes a point, and an important point, that these type of facilities normally lend themselves to minimum security type arrangements, which I think the Chairman well recognizes.

In any event, the Bureau will assert--and you will hear from them later--that they are actively trying to identify opportunities

to bring into bear facilities like that. The Chairman's idea of trying to put some of these prisoners on military reservations certainly has some merit. It is something that has been tried in some places and it is something that certainly deserves further consideration to avoid the cost of new construction.

Finally, you have new construction itself.

What do I conclude from all of this? First, it seems clear that the Bureau is probably going to have to expand its bed capacity to as much as 65,000 or 70,000, if I take the low end of everybody's estimates, by 1997, with the possibility of requiring much more space than that.

Second, given the softness of these out-year estimates, the Bureau should move cautiously and continually revisit its analysis on the basis of current data. Past projections have proven in gross error so often that I think this is the sort of thing you have got to see what is happening. Are these projections on display here proving out? And something that the Committee would want to stay on top of is assuring that they are continually re-analyzed.

Thirdly, the Bureau needs to assure that it takes optimum advantage of the type of alternatives that I spoke about, and other ways of trying to satisfy their confinement and control needs.

Let me stop right there, Mr. Harris, and I would be glad to answer any questions.

Mr. HARRIS. All right. I think one thing that we might do, basically, is have everyone that is left on the witness list submit their testimony, give their testimony, and as soon as the Senator comes down, we will call you back then for questions that he would have.

So in light of that, we will move on to the next panel. I want you to stay around so that you will be available for questions from the Senator.

Our next panel will consist of Mr. William J. Landers, the Deputy Associate Attorney General from the Department of Justice, Mr. J. Michael Quinlan, the Director, Bureau of Prisons, Department of Justice, and would you introduce anyone else who might accompany you.

TESTIMONY OF J. MICHAEL QUINLAN, DIRECTOR, BUREAU OF PRISONS, DEPARTMENT OF JUSTICE,[1] ACCOMPANIED BY WADE HOUK, ASSISTANT DIRECTOR, ADMINISTRATION; AND WILLIAM J. LANDERS, DEPUTY ASSOCIATE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. QUINLAN. If I could, Mr. Harris, I would like to introduce Wade Houk, Assistant Director of the Bureau of Prisons for Administration, who is here with me today.

I would like to summarize the statement that we have submitted, if I could.

Today, the Federal inmate population is approximately 43,500, an increase of over 19,000 inmates in the past 6½ years, and represents an 83 percent increase since 1981—concrete evidence of the continuing success of the Administration's Federal law enforcement programs.

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[1] See p. 55 for Mr. Quinlan's prepared statement.

Currently, these 43,500 inmates are housed in Federal facilities that by contemporary standards should confine 28,000 inmates, a system-wide overcrowding rate of 56 percent. Some individual institutions are overcrowded by more than 100 percent.

As you know, prison overcrowding is commonly related to an increased potential for inmate idleness, unrest and litigation. It has been judged as the major contributing factor in some of the worst State prison disturbances. The current level of prison overcrowding, coupled with substantial projected growth in the future prison population can create a crisis of major proportions in the Federal criminal justice system.

In order to preclude this result and ensure the future viability of the Federal prison system, the Attorney General has established a major objective for the Bureau of Prisons. The objective is to expand the capacity of the Federal prison system to keep pace with projected increases in the inmate population and to simultaneously reduce prison overcrowding. This is reflected in the President's fiscal year 1988 budget.

This Administration and the Congress have strongly supported the current facility expansion program, which has been the largest in the Bureau of Prison's history. Since 1981 the system's capacity has increased by approximately 4,500 beds through the construction of new housing units at existing prisons, acquisitions and conversion of existing properties to correctional facilities, and the construction and activation of new prisons.

In addition to these projects, the Congress has appropriated funds to build seven new prisons and several additions to existing facilities, which will house almost 7,000 inmates. In the fiscal year 1988 budget now before the Congress, construction funds for two more prisons and other expansion projects which will house 2,400 more inmates are being requested.

While the expansion program to date has been substantial, it clearly is not sufficient to meet both future population increases and reduce overcrowding. The Bureau of Prisons has recently completed a new multi-year expansion plan, and as I know you understand, I cannot review this plan in detail at this time since it is now under review in the Executive branch as part of the formulation of the President's fiscal year 1989 budget.

However, I can note that the inmate population projection upon which our plan is based is similar to the low-range estimates recently submitted to the Congress by the U.S. Sentencing Commission. The Bureau of Prisons has worked closely with the Commission in the development of its projection model. While recognizing the inherent difficulties of any prison projection methodology, I believe that the range of estimates made by the Commission and their underlying policy assumptions are reasonable.

Chairman Chiles has correctly noted that substantial budget resources will be necessary to continue the expansion of the Federal prison system. In this context I understand that further hearings may focus in detail on alternatives to new prison construction, including increased use of half-way houses, recent development of electronic devices such as house arrest, and potential use of prisons operated by private sector firms.

I want to assure you and the members of the Subcommittee that we are extremely sensitive to the objectives of meeting our mission in the most cost effective manner. We are actively using most of these options at this time and plan to increase their use. However, it is clear to me that public safety will dictate that the majority of our expansion needs will require the construction of new Federal correctional institutions.

The Bureau of Prisons has taken several actions to ensure that new prison construction is as cost effective as possible. These include the use of Federal surplus property or the donation of land to the Government at no cost, and the use of already proven prison design and new construction techniques.

Another area of prison system expansion which is cost effective is the use of military facilities. Several current Bureau of Prison facilities are located on former military bases and of our minimum security prison camps operate on active bases with outstanding success and cooperation. In this context we are extremely pleased with Secretary Weinberger's report to the Attorney General in response to the Anti-Drug Abuse Act which we are now looking at very closely and plan to respond to in the next few weeks.

I recognize that the prison expansion program required to meet our objectives is an undertaking of substantial dimensions, both in terms of human and financial resources. It is equally clear that failure to achieve the objectives can result in prison overcrowding that could seriously jeopardize the life and safety of the Bureau of Prison staff and inmates.

This type of crisis could quickly lead to gridlock in the Federal criminal justice system, inviting court intervention in the establishment of prison population caps, a situation which has occurred in several State correctional systems.

This concludes my prepared statement and I would be glad to respond to any questions at the appropriate time.

Mr. HARRIS. Mr. Quinlan, as I explained, what we will do is hold the questions for the Senator's presence, if either one of you other gentlemen would want to add to the statement that has been submitted, please feel free to do so.

Mr. LANDERS. If I might just add briefly, Mr. Harris, in terms of the Administration's commitment and the Attorney General's commitment to getting the necessary resources for prison expansion, I want to highlight the fact that this commitment is something that the Department of Justice has been addressing since before the impact of the sentencing guidelines were even taking into consideration.

As Mr. Quinlan has indicated, we knew before any of those initiatives—the sentencing guidelines or any of those things were taken into account—that we were over the 20 percent overcrowding that we deemed to be a desirable level of overcrowding. The Attorney General, to help address this situation, has elevated this to a number 1 priority within the Department.

The National Drug Policy Board has established a Subcommittee on prison space, pretrial detention and immigration detention that is looking at this problem comprehensively. And our idea is to look at all of the needs of the Marshal Service, the Bureau of Prisons

and Immigration Service and come up with a coordinated program that can address all of those needs.

Each of them is a little bit different. The Marshal Service, of course, has temporary detention and has to be close to the courts. The Bureau of Prisons has multiple levels of security that they have to be concerned with. Our idea is to work together with all the components to decide what their needs are, and we have worked closely in this Subcommittee with the Department of Defense, Office of Management and Budget, INS, U.S. Marshal Service, and BOP.

If I can comment as to the Department's perspective with respect to this problem, it is that the decisions that were made that are gearing this need for additional resources were decisions that were reached in previous years, with the Comprehensive Crime Control Act, the Anti-Drug Abuse Act of 1986, and the Sentencing Reform Act.

We believe that all of those initiatives were proper and appropriate and that we have to commit ourselves to finding the way to deal with this. Now, I know that a lot of concern has been raised about alternatives, and the only thing I would like to add in that regard is that alternatives to new prison facilities can only work if the prison population is amenable to those alternatives.

In that regard, the numbers that the Sentencing Commission has come up with do not answer that question. We need to go beyond those numbers and see what kind of prison population we are dealing with before we will know if the alternatives can be used.

That concludes my remarks.

Mr. HARRIS. Wait just one second.

Senator GRAHAM [presiding]. Welcome. I apologize that the quality of leadership of this Subcommittee has gone down so quickly. [Laughter.]

I am afraid that we are going to have a roll-call vote shortly, but maybe we can proceed for a few minutes until I have to leave and possibly someone replaces me.

Mr. QUINLAN. I am prepared to answer any questions. I have read the summary of the statement that the Bureau of Prisons had.

Senator GRAHAM. I am going to be asking some questions which were prepared by Senator Chiles. You have heard the estimates of the General Accounting Office, $2.8 billion to $5.5 billion for the next 10 years to meet the construction demand for prisons; do you have a comment on those GAO estimates?

Mr. QUINLAN. I think that the estimates, assuming that the sentencing guideline projections are correct and that we are going to need an additional number of bed spaces, that the projections are reasonable.

Senator GRAHAM. I would like to ask a personal question. In arriving at those estimates, putting aside the policy changes which may be incident to sentencing guidelines, did they assume that other standards of Federal criminal procedure would be consistent? Let me, if I could, illuminate that question by a couple of specific examples from my own State.

There had been a practice, sometimes publicly stated and other times not, of setting prosecution standards within the Federal

courts, and one of the reasons given for the necessity of those prosecution standards was that there was not sufficient capacity in the Federal penal system to accept all the people that could potentially be incarcerated if the standards were not imposed. The consequence was that, particularly in the drug area, many cases ended up in the State courts, which but for that would have been in the Federal courts.

The second has to do with the question of illegal aliens who commit felonies, ending up in the State institutions, again because of the inadequate capacity in the Federal system.

Both of those conditions predated issues of sentencing guidelines. So my question is, in arriving at the projections, was it assumed that those policy judgments and, I am certain, others would be continued, or that the Federal penal system would be sufficient to accommodate an unrestrained flow of inmates based on a full application of Federal criminal justice responsibility?

Mr. LANDERS. I would like to respond to that, Senator Graham. I am not sure about the exact situation in Florida. I do know that in most districts the referral of cases to the State system, or that type of thing with drug cases and such is not so much driven by the prison capacity issue as it is by the judicial system and the ability of the courts to handle those cases. In many instances, those kinds of cases, the drug cases in particular, and we are talking about street-level dealing, are handled much quicker and much more efficiently in a State court system that does not have the procedural time lags that the Federal system sometimes has.

So as to those assumptions, I do not know if the Sentencing Commission could really address them, because they will vary from district to district.

Senator GRAHAM. I am asking a different set of questions from the sentencing guidelines. I am asking the question of what was the baseline of Federal policy upon which then sentencing guidelines were laid for purposes of arriving that the projection of need? Or to put it another way, did you assume that the status quo ante sentencing guidelines was going to continue and that the only policy change would be that which would flow from the sentencing guidelines.

Mr. LANDERS. I think that is an issue that they are addressing now. We have had meetings with the Sentencing Commission.

Senator GRAHAM. Excuse me, who is they?

Mr. LANDERS. That the Sentencing Commission is addressing now. We have had meetings with them to discuss the question of whether Federal——

Senator GRAHAM. But what I am saying, is that some of these questions do not relate to sentencing. If the person is never prosecuted because the District Attorney has set a standard that—and I hate to say this, but in our State we are not talking about trivial cases. We may be talking about hundreds of pounds of marijuana or up to significant proportions of kilos of cocaine as the cut point for Federal prosecution.

I agree that it is not necessarily just the constipation at the penal end. It may be the courts, the prosecutors, or other areas that are causing a judgment to be made that we cannot handle cases that do not reach that level of pressure.

Mr. LANDERS. I am not certain whether they assumed that would continue as present or would change. I do know that in terms of what they discussed with us about whether Federal prosecution priorities or case disposition will change, that we talked to them about that—whether or not cases would be disposed of differently, whether prosecutors would simply refuse to bring certain cases in response to what the guidelines or sentencing impact may do. And that is an issue that we have started to discuss with them.

I know internally in the Department when we have looked at this, we have come to the conclusion that in terms of the cases that we are going to be prosecuting, our number 1 priority will be to devise resources that we have to those major drug cases, which is primarily what we are now doing. But I do not think we can gauge whether any baseline now exists and how that baseline will change until we see what really occurs in the future with our resources.

Mr. QUINLAN. If I could just add to that, Senator, that the Sentencing Commission has provided in their report to Congress a range of different population figures. They have made some assumptions as to what the growth in prosecutions might be and they interpreted what that growth might be and how it would affect the prison system, and their ranges run from a low of 78,000 by 1997 up to a high of 125,000, based on different assumptions that would have to be made on prosecution policy and whether judges followed the guidelines.

Senator GRAHAM. I apologize, but I am going to have to go to make this roll call. I understand that Senator Chiles has just voted and is on his way, and so the hearing will be recessed until Senator Chiles can return.

Thank you.

[Brief recess.]

Senator CHILES. Mr. Landers, Mr. Quinlan, Mr. Houk, thank you all very much for being here. This is kind of musical chairs that we are playing today but I guess that happens to us around here. We appreciate very much your appearance here. I understand that we have had the benefit of your statement.

Based on the projected inmate population increases for the next 5 to 10 years, what class of prisons do you anticipate would be impacted the most, and will any class see population pressure actually reduced?

Mr. QUINLAN. I think the initial impact, Mr. Chairman, is going to be felt at the minimum security level institutions, because the guidelines, if they are enacted, will greatly diminish the use of Federal probation and those cases would most likely be coming into minimum security facilities early in 1988 or in that timeframe.

Long range, when the impact of the guidelines is felt in terms of longer sentences for drug offenders, as a result of not only the guidelines but the Anti-Drug Abuse Act, which is going to have a much more serious impact on those sentences, in the long term we are going to need more medium security and high security prisons.

Senator CHILES. In the short term, that minimum security, that would open itself up for these installations that we might find on military bases?

Mr. QUINLAN. Absolutely. As you have already indicated, the facility at Eglin and other facilities that we have at Montgomery and

soon at Tyndall, also in your home State, are very beneficial, not only to the Bureau of Prisons, but they are also beneficial to the military in that we are able to provide very cheap labor.

Senator CHILES. Is there any installation that you have at a military base now where it is offensive to the base commander or the military personnel there? Or are you finding complaints about it?

Mr. QUINLAN. No, sir.

Senator CHILES. How about the civilian population that lives around that base?

Mr. QUINLAN. No, sir. They are all very happy and encouraged us—I used to be the superintendent at Eglin—and I must say the base commander was always encouraging me to get more inmates to help staff some of those details. [Laughter.]

Senator CHILES. I have heard that same kind of thing. I just wanted to find out—I knew that was true at Eglin—but I wanted to find out if that was true elsewhere.

Mr. QUINLAN. It is true wherever we have locations on military facilities.

Senator CHILES. And they are certainly cost effective to the Bureau of Prisons, as well.

Mr. QUINLAN. They are less than half the cost of the average cost of housing in a Federal prison, less than half.

Senator CHILES. When are you going to open Marianna?

Mr. QUINLAN. We hope to open it next spring. Senator.

Senator CHILES. Next spring?

Mr. QUINLAN. In May.

Senator CHILES. You are making a heck of a scar on the land when I fly over there in an airplane. I looked around and I could not figure what that was for awhile, what was going on there.

Are you still having good relations with the people that are there?

Mr. QUINLAN. Excellent relationships with the people in Marianna.

Senator CHILES. They tell me if you need another one, they will find some more land, if you need another site there.

Mr. QUINLAN. We may be needing to talk to them about that.

Senator CHILES. But you are saying that in the short term, then, it is going to be the minimum facilities, but as the Anti-Drug bill provisions come into effect it will be more demand on the medium?

Mr. QUINLAN. That is correct, sir.

Senator CHILES. And those will be more expensive?

Mr. QUINLAN. Unfortunately, yes. There the average cost is, at today's dollars, Senator, about $66,000 to $70,000 per cell.

Senator CHILES. What were your reactions to the GAO estimates of costs?

Mr. QUINLAN. I think the GAO estimates were reasonable. I think that they used the cost figures that the Bureau was experiencing and the current construction projects. I think they also included the construction project at Marianna, and they came to the conclusion that it would be about $66,000 on average. What the GAO estimate does not factor in is the possibility that in lieu of opening brand new facilities, we could open facilities at military bases or converted seminaries or colleges that had closed, and they are at a great cost savings to the Government.

So that is the only comment I would have about the GAO estimate. Otherwise, I think it is entirely reasonable.

Senator CHILES. You mentioned a new multi-year expansion plan recently completed but under review for submission for the fiscal year 1989 budget package. I know you cannot go into any detail, but it would be useful for us to know what level of crowding that you are targeting for.

Is your goal to have some margin to operate at capacity or to continue to operate at over capacity?

Mr. QUINLAN. Well, in terms of the Administration's policy, Senator, the President and the Attorney General have supported the concept in the past that we would operate at the 20 percent figure over our design capacity, under the current circumstances. That figure is under review, obviously. We are going to be working closely with the Attorney General and the Office of Management and Budget to come up with the correct level, but in the past and included in the fiscal year 1988 request of the President is a factor of 20 percent over our design capacity as our goal, as well as keeping up with the increased population that is coming in every year.

Senator CHILES. What is the earliest that you could bring on-line a prison that is funded in let's say fiscal year 1989 or beyond?

Mr. QUINLAN. The earliest would be in about 30 months, Senator.

Senator CHILES. Thirty months. Would that differ depending on whether it is a minimum?

Mr. QUINLAN. If it is a facility that did not require a great deal of security fences and things of that nature, if could be done quicker.

Senator CHILES. Certainly, if you could convert something, it——

Mr. QUINLAN. If we could convert something, we have put facilities that we have converted on-line—such as the facility at the military base in Duluth, Minnesota—we have done it as quickly as 5 months.

Senator CHILES. I would like to have you all stay, if you might, and I would like to ask Lieutenant General Lukeman to come up now and testify. He is the Assistant Secretary of Defense for Military Manpower and Personnel Policy.

General, I thank you for your patience in sitting here during this time.

TESTIMONY OF LT. GEN. ANTHONY LUKEMAN, ASSISTANT SECRETARY OF DEFENSE FOR MILITARY MANPOWER AND PERSONNEL POLICY, DEPARTMENT OF DEFENSE

General LUKEMAN. It was very educational to be here, sir.

Senator CHILES. Well, our game of musical chairs happens around here quite a bit. We would be happy to hear any statement that you have.

General LUKEMAN. Sir, I have a formal statement, and with your permission I will enter it into the record and respond to your questions.[1]

Senator CHILES. All right, sir. Your statement in full will be entered into the record.

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[1] See p. 63.

Senator CHILES. I am glad that you did have a chance to be here a while, General, because I think maybe it would be of interest to hear some of the numbers. I can tell you, some of these numbers are going to come as a shock to the Congress when they really begin to seep in, because it is easy to pass these bills—and I voted for all of them and most of us did—getting tough on crime. We knew we had to do some of the things which were in various bills.

But between the three things that we have done, with us providing the sentencing guidelines—there was good reason for that—with the habitual criminal, in trying to see these people that are repeated offenders and knowing that there is not way that they are going to change their spots and you might as well recognize that and decide you are going to protect the public; and then the anti-drug bill, with mandatory sentences because we are tired of seeing some of these major drug dealers get probation and not have to serve anything.

But out of those three you see what we are talking about, $2 to $5 billion plus the $1 billion annually a year, and I think maybe that gives you an idea of why we are looking around and trying to find out if there are alternatives, and what ways. Certainly trying to find where we can put some more "Eglins" or "Maxwells" is important.

Also, of course, we are going to continue to explore and look forward to what can we do about prison industries and seeing that there is some kind of return, reducing costs, and all kinds of things that we are going to go into.

But my amendment to the drug bill did not intend any comingling of military prisoners and civilian prisoners. I know there was some concern at the Defense Department about a possible violation of Posse Camitatus. We are not contemplating that and, obviously, Posse Camitatus has not been a problem at Maxwell or Eglin or some of these other facilities, and so we are thinking basically along the same line.

So we think that because there have been some successful joint ventures of DOD and the Bureau of Prisons in those areas that we ought to be able to convince them to build on that.

I am told—and we were talking about our experience at Eglin—but I have been told that prisons on bases have been well received by the base commanders. Do you have information on that? Am I wrong? Or are we just talking about a couple of bases that we know about?

General LUKEMAN. I think the last is most accurate, Mr. Chairman, that both in the Case of Maxwell Air Force Base and Eglin, that it has been positive as far as the base commanders have been concerned. That is pretty much our experience, because the other major facility that was turned over is run entirely as a prison, not in association with a military base. That is Lompoc out in California.

Senator CHILES. I see. Well, that being true, does it look like the military can take further advantage of some cost-saving practices at some other bases like Maxwell and Eglin are doing?

General LUKEMAN. I think there are some real possibilities, sir. Over the past several months we have looked at every military installation in the continental United States and identified some-

where under 100 that actually have vacant buildings and potential excess buildings that conceivably might be used for this purpose. We have also identified, it looks like right now, three actual correction facilities that were built for that purpose that conceivably might be of use to the Department of Justice.

So the process recently has been that DOJ has been taking a look at some of these facilities and is going to see which ones might meet the need and then come over to the Department of Defense and then we will talk about the specifics of whatever it is that might meet the need.

Senator CHILES. So there are up to 100 facilities in all of your inventory that have some possibilities, but there are three that are actual detention facilities as opposed to being some other thing that would be converted, that you think could be used.

General LUKEMAN. That is correct.

Senator CHILES. Are those three at bases that are currently in operation as opposed to a base that is moth-balled now?

General LUKEMAN. They are. There is one at Indiantown Gap in Pennsylvania, one at Fort Gordon, Georgia, and one at Fort Polk, Louisiana.

Senator CHILES. Has the Department of Justice looked at these facilities yet?

Mr. LANDERS. I know at least two of these three particular facilities we have investigated.

Mr. QUINLAN. Senator, the entire group that Secretary Weinberger sent over of 88 sites have been looked at, some of the personally and some of them by contact with the base commanders, and we have identified, in addition to these three that General Lukeman has mentioned——

Senator CHILES. Well, let me ask you first about these three. Do they have possibilities?

Mr. QUINLAN. They all look like they have good potential, Senator.

Senator CHILES. Good potential?

Mr. QUINLAN. Yes. And we are proposing to go back to the Secretary and ask him if we can pursue it and possibly obtain jurisdiction on those particular sites.

Senator CHILES. Do you have any idea how long it will take to get these three on line, assuming you make a decision to go with one, how long it would take?

Mr. QUINLAN. I am advised, Mr. Chairman, that it would take somewhere between 3 to 6 months, depending on the level of renovation that would be necessary at each of these sites, that we could actually activate.

Senator CHILES. Comparing that to 30 months, though, that sounds pretty good; 3 to 6 months.

Mr. QUINLAN. It sounds excellent.

Senator CHILES. Certainly the cost has got to be different.

General, is there anything in the mill now to set some kind of a policy to develop more joint ventures with the Bureau of Prisons or the Department of Justice, whoever it would be? It would seem that if these have been successful, we certainly have the demand and the need there that some kind of a joint-venture policy could be very beneficial.

General LUKEMAN. I think that with the leadership of the Department of Justice over the past several months and the particular focus on the drug problem, that a policy may well be emerging. We will see what comes out of the request from DOJ. If that is positive, and I see no reason why it should not be, then something more may continue from that.

Senator CHILES. At this stage you do not see any obstacles to further joint ventures in trying to set up such a policy?

General LUKEMAN. I think along the lines that the Department of Justice is now talking, that the obstacles should be few, because we are talking about minimum security prisoners, and as the Chairman just mentioned, we are not talking about commingling of military prisoners and civilian prisoners, and we are talking about existing facilities that are not presently being used.

I am sure that in many cases there will be public relations and community relations concerns that everybody is very familiar with and we are just going to have to work on those.

Senator CHILES. Well, I think if you get a little information out and work on those, I certainly do not think there is any problem around the Eglin facility with the community. There has not been. It has been very positive, it has been my experience with that, and I hear pretty quickly when there are problems in regard to that. So I would hope that those could be dealt with.

I understand that one of the facilities is at Tyndall Air Force Base. Can you give me any idea of where that stands, what the status of it is?

Mr. QUINLAN. We hope to move prisoners on to Tyndall Air Force Base by September or October, Senator.

Senator CHILES. By September or October, and this is something that meets with the full approval of the base commander there, I understand?

Mr. QUINLAN. Full approval and support from all of the base personnel that we have dealt with. It will start out as a 150 man minimum security camp similar to the Eglin facility, and as resources become available, we hope to expand that to ultimately a 500 man facility similar to Eglin.

Senator CHILES. I thank you all very much for your appearance. And General, I certainly thank you.

Mr. QUINLAN. Thank you, Mr. Chairman.

General LUKEMAN. Thank you, sir.

Senator CHILES. Now, if I can have our GAO panel back.

Mr. Anderson, again, I apologize for my rapid exit and then coming back. Thank goodness Senator Graham could come in here and help me out for awhile. That was very beneficial.

The Appropriations Committee is dealing with the allocations of all of the Subcommittees' numbers.

Mr. W. ANDERSON. That is important business, sir.

Senator CHILES. That happens to be true.

Again, I want to thank you all for the comprehensive work that you all did and the quick turn around time that you gave us on doing that.

Under the Comprehensive Crime Control Act of 1984 you are charged with undertaking a study of the guidelines, their impact, and you are to complete that study 150 days after submission of

the guidelines. This report is a condition of the guidelines going into effect.

Do you expect to complete your study before that deadline?

Mr. W. ANDERSON. Yes, sir, we will. September 10th is the precise due date on it, and in the event that the implementation of the guidelines is not delayed, we will have something for the Congress by that time.

Senator CHILES. I understand you do not call this a study, you call it a critique. Is this an implicit endorsement of the Sentencing Commission's report?

Mr. W. ANDERSON. Are you talking of the entire report, sir, rather than just the narrowly focused prison discussion?

Senator CHILES. Yes, the entire report.

Mr. W. ANDERSON. I would say that we are going to give the Congress our best effort at evaluating the impact of the guidelines on the criminal justice system. Our task was very broad. We have gathered a distinguished group of consultants to work with us. In addition GAO had to get the help of other people, like some of the members of the Sentencing Commission itself, and people from the Judiciary.

I think we are going to be in a position to give the Congress an informed study, critique, whatever you will—a statement of views on what the impact of the Commission's guidelines would be on the criminal justice system.

Senator CHILES. Based on the projected inmate population increases for the next 10 years, you project construction costs ranging from $2.8 billion to $5.5 billion, but you state those costs could go higher if a disproportionate amount of the space has to be in maximum security facilities.

Do the guidelines or the drug bill's minimum mandatory sentences impact the decision on which security level a prisoner requires?

Mr. W. ANDERSON. First sir, I have to correct something for the record, Mr. Chairman, because you were not here when I brought it to the attention of Mr. Harris, who was sitting in your chair at the time. We did deliver today a supplementary fact sheet, and I knew this was very important to you in terms of understanding what the impact on needed future space might be, and so we have a more comprehensive range of possibilities, is what I will call them. It was on page 2 of the handout.

In any event sir, the point I want to make is that the more comprehensive range takes us from $1.9 billion in potential costs to meet 1997 requirements. That would be based on more or less the number that we think the Bureau is going to come up with, up to that of $4.6 billion in potential costs.

Now, let me get back to the question that you asked. One of the things that I think Mr. Quinlan pointed out, or perhaps it was Mr. Landers, was that initially at least one of the principal impacts is going to be a reduction in the amount of sentences to probation only.

I know a number that sticks in my mind was that for property crimes straight probation without any confinement is expected to go down as a sentence from 60 percent to something like 33 percent. A lot more people that did not have to go to jail before for

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low-level crimes are going to have a little time of confinement. That is part of the philosophy that the Sentencing Commission has elected to pursue—just desserts or whatever.

In other words, they want a greater number of offenders to have some confinement than under current practice. So we are going to have more minimum security types going in there, at least initially.

On the other hand, we have the increase in the population. Let's take anti-drug abuse and habitual offenders where as I kind of view it, we are incarcerating hard cases longer and they are going to constitute a larger part of our population. What I do not know, and I do not know whether the Bureau has thought it through yet, is what the composition of the prison population is going to be like 10 years from now, for example.

I have not seen a breakdown of any kind. I do know that right now about 15 percent of the prison population are level 1 types, minimum security types. If I take my 70,000 or 80,000, it looks like I might have as many as 12,000—10,000 or 12,000 minimum security types that could be accommodated in the type of accommodations that you have been speaking to the General and the Bureau about.

Senator CHILES. In your analysis of the Federal prison system, what are your impressions of the success of the use of Defense Department bases for Federal prisons?

Mr. W. ANDERSON. The information that we have would indicate that what you have heard today is in fact the way it is. It has been successful where it has been tried.

Senator CHILES. Are there overall cost savings to the Government and has there been any impact on the military mission?

Mr. W. ANDERSON. With respect to cost savings, I heard today we had not—GAO—independently established it before, that it cost less than half as much as that $25 to $35 a day that we normally think of. As far as I know, military mission has not been degraded.

Senator CHILES. Well, I am very interested in the Department of Defense and the Bureau of Prison's list, so we will be asking GAO to look at these sites and to help us in looking over their evaluation of these potential listings.

Again, thank you very much for your efforts in the report and for waiting around for me during part of this time.

Mr. W. ANDERSON. Thank you, Mr. Chairman.

Senator CHILES. We will recess our hearings now until the call of the Chair. We will be holding some other hearings on this subject.

Thank you.

[Whereupon, at 4:50 p.m., the Subcommittee adjourned subject to the call of the Chair.]

APPENDIX

TESTIMONY OF WILLIAM RHODES
BEFORE THE SUBCOMMITTEE ON FEDERAL SPENDING,
BUDGET AND ACCOUNTING OF THE SENATE
GOVERNMENTAL AFFAIRS COMMITTEE

21 JULY 1987

Working closely with the Bureau of Prisons, the Sentencing Commission developed a detailed model of prison impact and used that model to project future demands on the federal prisons. As research director at the Sentencing Commission, I had primary staff responsibility for developing that model. I appreciate this opportunity to discuss those projections.

Our methods and results are described in detail in the Supplementary Report on the Initial Sentencing Guidelines and Policy Statements. I will limit myself to a summary.

I. The model

Projecting future prison demands is an inexact science. It requires making various assumptions about the future, for example: the number of criminal convictions, the extent of departures from the guidelines, and the role of plea negotiations under the guidelines. It is complicated further by implementation of new legislation, notably: the Anti-Drug Abuse Act of 1986 and the career offender provision of the Crime Control Act of 1984. We may err when making the necessary assumptions and, consequently, when making projections.

Because it is so difficult to predict future prison demands, we developed separate projections for alternative sets of assumptions. Regardless of the assumptions used, the projections--which I will relate in a minute--remain similar:

with or without sentencing guidelines, the federal criminal justice system must brace itself for expanding demands on the prison system.

We have discussed our assumptions and results with people outside the Commission. We have worked especially closely with the Bureau of Prisons. No one agrees with all the assumptions used in the model. On the other hand, we have not encountered strong resistance to our major conclusions: Future prison increases can be attributed primarily to increases in criminal prosecutions, to the Anti-Drug Abuse Act, and to the career offender provision; the guidelines themselves have a marginal effect beyond those other three causes.

II. Probation under the guidelines

As the Crime Control Act suggests, the incidence of straight probation terms (probation without some confinement as a special condition) will decrease under the guidelines. For crimes of violence, for the distribution of drugs, and for some other types of offenses (such as income tax evasion), the effect is straightforward: fewer offenders will receive probation.

For other crimes--essentially property crimes--the effect is more complicated. The incidence of straight probation will be reduced. However, straight probation will be replaced partly by probation with conditions involving intermittent confinement, community confinement, and by sentences that are to be split between prison and community corrections. The overall incidence

of probation--with and without some kind of confinement--is not expected to change radically under the guidelines.

Although the Commission has attempted to reduce probation sentences, probation sentences will not disappear under the guidelines. For example, an unsophisticated, $10,000 bank embezzlement would not require any confinement if the defendant accepted responsibility for his actions. Even a relatively sophisticated, $50,000 bank embezzlement could result in as little as 6 months of intermittent or community confinement.

As was true in the past, first-time offenders who have been convicted of the least serious crimes will be placed on probation routinely. Different from the past, however, some offenders--these include repeat offenders and defendants who are convicted of more serious property crimes--who completely avoided jail time prior to the guidelines will incur jail time when the guidelines are implemented. This change reflects Commission efforts to rationalize existing sentences by treating the white collar fraud offender as severely as the blue collar theft offender and to implement the Commission's view that short, but definite, terms of confinement will help deter such crimes as tax evasion, price fixing, and insider trading.

What are the implications for the prisons of this reduction in probation? The Bureau of Prisons will be required to house an increased number of offenders for short terms in community correction and other minimum security facilities. On any given day, about 800 offenders are incarcerated as "direct commitments"

from the courts or as a condition of probation; we project that this figure will increase to about 3,000 under the guidelines. This is roughly half of the total prison impact attributable to the guidelines. It is notable that minimum security facilities and community corrections facilities are significantly less expensive than prisons.

III. Average time served will increase for some crimes

Average time served for most violent crimes will increase under the guidelines. Although the career offender provision accounts for some of this increase, most is attributable to Commission policy decisions.

Average time served for drug law violations (expect simple possession) will increase dramatically under the guidelines, largely because of the new drug law and career offender provision. For example, given current practices, drug law violators serve an average of 23 months. Had the drug law been in effect when these offenders were sentenced, we project that they would have served an average of 48 months. Thus, the drug law itself doubles the average prison term. Had the career offender provision also been in effect, the overall average would have been closer to 57 months. All-in-all, once the guidelines are taken into account, drug law violators will serve an average of about 58 months--somewhat longer terms than are required by the combined drug law and career offender provision.

When the Commission was constrained neither by the drug law

nor by the career offender provision, average sentences under the guidelines are similar to those prior to the guidelines--except, of course, that probation is less frequent. An exception is for income tax violations, for which the Commission made future sentences correspond to the sentences received by other offenders convicted of fraud. Consequently, tax-law violators will serve more time in the future.

These changes in average prison sentences portend the impact of the guidelines on the prisons. I will turn to that impact next.

V. Prison impact

Future prison demands will depend importantly on the number of future criminal convictions, so as a first step in the prison impact projections, we had to estimate future criminal caseload. Our estimates are based on recent trends in federal convictions. We made both "low-growth" and a "high-growth" estimates, thereby providing ranges for future caseloads.

We made projections for 5, 10 and 15-year periods. We are confident of the 5-year projections. We are less confident of the 10-year projections. The 15-year projections are highly speculative.

Even in a low growth scenario, prison populations are projected to grow dramatically. Excluding some nonsentenced detainees, current prison populations are about 42,000. We project that prison demands will increase to 72,000 by 1992 and

to 92,000 by 1997. Adopting a high-growth scenario, current populations are projected to increase to 79,000 in 1992 and to 118,000 in 1997.

This is to say that it would not be unreasonable to anticipate a doubling or a tripling in the federal prison population over the next decade. Furthermore, the low growth projections are not much lower, and the high growth projections are not much higher, when our projections are based on alternative assumptions. To repeat my earlier statement: the federal criminal justice system must brace itself for expanding demands on the prison system.

It is important to identify the reasons for this growth, most of which has nothing to do with the guidelines.

First, prison populations have grown by 83 percent during the present administration. We project that this growth would continue, at a somewhat diminished rate, over the decade. Thus, even without any new laws and without the guidelines, prisons are projected to increase by between 45 and 88 percent over the next 10 years. We refer to these estimates as the "baseline."

Second, the Anti-Drug Abuse Act of 1986 requires mandatory minimum terms for many drug law violations, increases the maximum terms for most drug law violations, and defines new conditions that require enhanced penalties. By 1992, the drug law alone is projected to increase demands on the prisons by about 18 percent beyond the baseline; by 1997, the drug law alone is projected to increase demands on the prisons by about 38 percent beyond the

baseline. The drug law is a prominent explanation for future demands on the prisons.

Third, the career offender provision of the Crime Control Act of 1984 requires a term at or near the statutory maximum for certain repeat offenders who are convicted of drug law violations and violent crimes. This provision has an additional effect on the prison population, increasing it by about 2 percent in 1992, by about 6 percent by 1997, and by larger amounts in latter years. Over the long run, career criminals will become an increasingly large proportion of the federal prison population.

Finally, we turn to the independent effect of the guidelines. Once we have taken into account current trends in prosecutions, the effect of the new drug law, and the effect of the career offender provision, the prison impact attributable directly to the guidelines is modest. We project the impact to be about 6 percent for 1992 and about 3 percent for 1997. Even when we vary the assumptions made in the projections, the independent effect of the guidelines does not increase much beyond 10 percent.

Our projections indicate large increases in prison populations. Perhaps they are overestimates. We have not factored a deterrence effect into the calculations. Nor have we factored in an incapacitation effect. Although we expect more serious penalties to deter, and while we anticipate that more repeat offenders will be incapacitated, these effects could not

be so great as to offset greatly the projected impact on the prisons.

VI. Future directions

The research staff continues to work on this model to correct remaining errors, refine the projections, and in general make the model's results more useful for policy deliberations. One of our projects is to extend the model to project needs for prison security levels. Another project is to provide construction costs and operating costs for different projections. Until these projects are completed, cost estimates are speculative.

Thank you. I would be pleased to answer any questions.

United States General Accounting Office

GAO Testimony

For Release
Expected at
2:00 p.m.
July 21, 1987

Sentencing Guidelines: What is Their Potential Impact on Federal Prisons?

Statement of
William J. Anderson, Assistant Comptroller General
General Government Programs

Before the
Subcommittee on Federal Spending, Budget, and Accounting
Committee on Governmental Affairs
United States Senate

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today. As you requested, our testimony will present the results of our review work to date on the United States Sentencing Commission's estimates of the impact of its sentencing guidelines on federal prisons.

BACKGROUND

The Comprehensive Crime Control Act of 1984 (Public Law 98-473) established the United States Sentencing Commission as an independent agency within the judicial branch. The Commission is composed of seven voting and two nonvoting members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system, including detailed guidelines prescribing the appropriate form and severity of punishment for offenders convicted of federal crimes. The guidelines are intended to reduce unwarranted sentencing disparities among offenders with similar criminal backgrounds who commit similar crimes. Under the guidelines' system, parole will be abolished and sentenced offenders will serve their entire sentences, less any good time credit--time reductions from their sentences for good behavior.

As required by the law, the Commission submitted its proposed guidelines to Congress on April 13, 1987. The guidelines were approved by six of the commissioners, with one commissioner

dissenting. The guidelines will go into effect on November 1, 1987, unless Congress passes a law to delay or stop their implementation. In submitting the guidelines, the Commission unanimously recommended that Congress delay their implementation for 9 months, or until August 1, 1988. The Commission wants this additional time for field testing the guidelines, training court officials, and proposing any necessary amendments to the guidelines before they go into effect.

Section 235 of Public Law 98-473 requires GAO to report to Congress within 150 days after the Commission submits its guidelines (by September 10, 1987) on the potential impact of the sentencing guidelines on the federal criminal justice system. In response to that requirement, we have been monitoring the Commission's activities and reviewing drafts of the guidelines. On July 13, 1987, one of your representatives asked us to be prepared to testify today on the Commission's study of the impact of the guidelines on federal prisons.

To address the prison impact issue, we reviewed (1) the Commission's June 18, 1987, Supplementary Report on the Initial Sentencing Guidelines and Policy Statements which contains a summary of the Commission's prison impact study; and (2) a draft of its technical report being prepared to further explain the methodology for its study. We also interviewed Commission officials responsible for preparing the impact study and Federal Prison System (FPS) officials responsible for estimating future

federal prison populations and preparing building plans for federal prisons.

The Commission believes that its sentencing guidelines will have a minimal effect on future prison populations. However, the Commission expects there will be significant growth in the federal prison population over the next 10 to 15 years primarily because of the mandatory minimum penalties required by the Anti-Drug Abuse Act of 1986, increases in federal prosecutions and convictions, and increased sentences required by the career offender provisions of the Comprehensive Crime Control Act of 1984. If the Commission's estimates prove to be accurate, it could cost several billion dollars over the next decade to build prisons for the additional inmates. Also, the increased prison population would, by 1997, add as much as $1 billion a year to the cost of inmate custody, care, and rehabilitation programs.

PRISON IMPACT

Between 1970 and 1986, the federal prison population increased significantly (averaging about 4.3 percent a year), with periods of sharp increases occurring from 1975 to 1978 and 1980 to 1986. From 1978 to 1980, a decrease in prosecutions contributed to a sharp decline in the federal prison population.

-- In fiscal year 1970 the average daily population was about 21,000.

-- In 1975 the population was about 23,000 and grew to about 30,000 in 1978, a 30.4 percent increase over 3 years.

-- The population dropped from 30,000 in 1978 to about 24,000 in 1980, a 20.0 percent drop in 2 years.

-- The population grew from about 24,000 in 1980 to about 39,000 in 1986, a 62.5 percent increase over 6 years.

-- FPS estimates that the average daily population for 1987 will be 42,000, a 7.7 percent increase in 1 year.

As of July 2, 1987, FPS reported that 43,507 inmates were in federal prisons. This was 15,581 (about 56 percent) more than the system's rated capacity of 27,926. An additional 5,031 prisoners were housed in contract facilities.

FPS officials said that overcrowding is the principal issue facing federal prisons. Prison overcrowding increases the likelihood of violence and puts the staff in greater danger. It also results in inmates being housed in less than generally acceptable conditions and makes providing efficient and effective operations and programs more difficult. To address the overcrowding problem, FPS plans to build more prisons and expand the capacities of some existing facilities.

Section 994(g) of Public Law 98-473 directs the Sentencing Commission to estimate the impact of its sentencing guidelines on the federal prison population. This section of the law also requires that the Commission make recommendations to Congress concerning any change or expansion in the nature or capacity of federal correctional facilities and services as a result of the guidelines. On June 18, 1987, the Commission provided a supplementary report to Congress that contained a prison impact study estimating dramatic increases in the future federal prison population. However, the Commission has not yet determined the number or types of facilities that would be needed to house the increased prison population it projects, although it plans to do so.

The Commission's study pointed out problems in forecasting prison populations, including the absence of reliable methods for predicting future crime rates and changes in the level of federal prosecutions and enforcement priorities. The study also noted that uncertainties about sentencing under the guidelines made forecasting the effects of the guidelines on prison populations especially difficult. For example, the study pointed out that the proportion of defendants who plead guilty could change under the guidelines. According to the Administrative Office of the United States Courts, during the 12-month period ending June 30, 1986, about 86 percent of the criminal cases were decided through guilty pleas. Similarly, the authority of judges to depart from the guidelines (even though they must provide a written

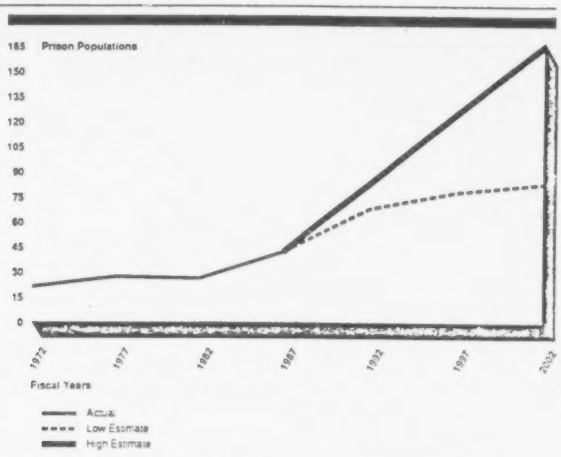
explanation) creates uncertainty about the ultimate impact of the guidelines.

After pointing out the unknowns concerning the guidelines' effect on future prison populations, the study explains how the Commission estimated this impact. Generally, the Commission analyzed sentencing practices for a sample of about 10,500 offenders who were convicted during fiscal year 1985. Then, working with FPS, the Commission developed a computer simulation model to project future prison population on the basis of a variety of factors, including: (1) current practice; (2) anticipated prosecution trends; (3) the Anti-Drug Abuse Act of 1986 (which requires, among other things, mandatory minimum sentences for certain drug offenders); (4) the career offender provisions of the Comprehensive Crime Control Act of 1984 (which require, among other things, substantial prison terms or terms at or near the maximum prescribed by law for certain repeat offenders); and (5) the guidelines.

Because future prosecution policy cannot be anticipated, the Commission projected prison impact for 1992, 1997, and 2002 using alternative assumptions concerning prosecution/conviction rates, plea negotiation practices, and the extent that judges would depart from the guidelines' sentences. The Commission's prison population estimates range from 67,000 to 83,000 for 1992, 78,000

to 125,000 for 1997, and 83,000 to 165,000 for 2002.[1] Compared to the 42,000 inmates estimated for 1987, these translate into increases which range from about 60 to 98 percent for 1992, 86 to 198 percent for 1997, and 98 to 293 percent for 2002. Figure 1 illustrates the Commission's estimated prison population growth.

Figure 1: Growth in Prison Population From 1972 to 2002



Source: Federal Prison System and U.S. Sentencing Commission

All figures for 1987 and beyond are estimates based on the U.S. Sentencing Commission prison population projections.

The Commission's estimates indicate that the population of federal prisons will increase dramatically primarily because

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[1]The Commission believes its 1992 estimates are the most accurate, its 1997 estimates are somewhat less accurate, and its 2002 estimates are very speculative.

convictions will increase, sentences that do not include confinement (probationary sentences) will be reduced significantly, and the average time served for drug related, violent, and repeated offenses will increase substantially. According to the Commission's study, the use of straight probation without any confinement will decrease under the guidelines for all nine offense types that they analyzed. In addition, the use of some type of confinement combined with probation will increase under the guidelines for six of the nine offense types analyzed. The Commission also estimates that the average imprisonment time will increase under the guidelines for seven of the nine offense types analyzed.

The Commission believes that the most significant factors contributing to future prison population increases will be growth in the number of prosecutions and the mandatory minimum sentences required by the new anti-drug law. The Commission attributes some of the growth to the longer sentences required under the career offender provisions of the Comprehensive Crime Control Act. It attributes a relatively modest amount of the increased prison population to the guidelines themselves. Table 1 shows the extent that the Commission believes each of these factors will contribute to growth in the federal prison system from 1987 to 1997 under two of its scenarios.[2]

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[2]We used these two scenarios because they contain estimates that fall between the Commission's lowest and highest estimates for 1997. Also, these are the two basic scenarios that the Commission discusses extensively in its study.

Table 1: Factors Contributing to Growth in Prison Populations 1987 to 1997

Factor	Scenario # 1 Estimated number	(Percent)	Scenario # 2 Estimated number	(Percent)
Growth due to increased prosecutions	+ 19,000	(38.0)	+ 36,000	(47.4)
Growth due to anti-drug law	+ 24,000	(48.0)	+ 30,000	(39.5)
Growth due to career offender law	+ 4,000	(8.0)	+ 6,000	(7.9)
Growth due to guidelines	+ 3,000	(6.0)	+ 4,000	(5.3)
Total growth	+ 50,000	(100.0)	+ 76,000	(100.0)[a]
Plus 1987 population	42,000		42,000	
Total 1997 population	92,000		118,000	

[a]Does not add to 100 due to rounding.

We are still in the process of reviewing the Commission's methodology for estimating prison impact. On the basis of our work so far, the Commission's methodology appears reasonable. The Assistant Director for Administration of FPS told us that FPS staff worked closely with the Sentencing Commission in developing the Commission's prison population projection model. While recognizing the inherent difficulties of all prison population projection methodologies, this official said that the Commission's range of estimates and their underlying assumptions are reasonable. He added that it is highly probable that FPS will eventually use the Commission's model, with possible modifications, to estimate future prison populations.

ESTIMATED COST OF INCREASED PRISON SPACE

Before the Commission submitted its proposed guidelines and prison impact estimates to Congress, FPS had planned to add 16 new prisons and expand the capacity of 38 (about 81 percent) of the existing 47 correctional facilities at a cost of about $900 million. FPS estimated that their prison population would be 55,200 by fiscal year 1993, and that they would have an overcrowding rate of about 20 percent (which calculates to a base capacity of 46,000). However, that estimate did not include the additional prison space that will be needed because of the Anti-Drug Abuse Act of 1986, the career offender provisions of the Comprehensive Crime Control Act of 1984, or the sentencing guidelines.

FPS' April 1987 cost estimates for new minimum/medium security correctional facilities indicate an average cost per bed of about $66,000. Applying that cost figure to the difference between the Sentencing Commission's estimated population and the approximate 34,500 bed capacity that has been funded by Congress (current capacity of about 28,000 beds plus about 6,500 beds in process) would provide a rough estimate of the cost to build new facilities for the additional prisoners.

Using the Commission's previously discussed 1997 populations of 92,000 and 118,000, FPS would need space for 57,500 to 83,500 additional prisoners at a cost of about $3.8 to $5.5 billion to totally eliminate overcrowding. To achieve a 20 percent overcrowding rate, which is FPS' goal, FPS would need 42,200 to 63,800 more spaces at a cost of about $2.8 to $4.2 billion.

These estimates do not reflect the higher costs likely because of future inflation. Also, the costs could be higher if FPS has to build proportionately more maximum security facilities. Maximum security facilities are more expensive than medium or minimum security facilities. Similarly, costs would be lower if more minimum security facilities were built. Further, the costs could be reduced to the extent that FPS can avoid constructing new prisons by using lesser cost alternatives, such as (1) expanding the capacity of existing federal prisons; (2) placing more offenders in state and local correctional facilities; (3) making greater use of halfway houses; or (4) acquiring facilities no longer needed for their original purpose. FPS officials believe the first two alternatives will not provide much relief because they are already expanding existing facilities to the maximum extent possible and because state and local facilities are currently overcrowded. Any need not met by these four alternatives would most likely have to be satisfied by new construction.

Besides the money needed to provide additional prison space, a greatly expanded prison population would substantially increase the funds needed by FPS to operate and maintain its prisons and to provide for inmate custody, care, and rehabilitation programs. For fiscal year 1986, FPS' operating costs were about $13,100 per inmate. Using that figure and ignoring any inflation or productivity improvements, FPS could need additional operating funds of as much as $650 million to $1 billion annually to house the 50,000 to 76,000 additional prisoners that the Sentencing Commission estimates for 1997.

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This concludes my prepared statement. We hope this information will assist the Subcommittee in its deliberations. We would be pleased to respond to any questions.

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General Accounting Office
Washington, D.C. 20548

FACTORS CONTRIBUTING TO
GROWTH IN PRISON POPULATIONS
1987 TO 1997

Factor	Scenario # 1 Estimated number	Scenario # 1 (Percent)	Scenario # 2 Estimated number	Scenario # 2 (Percent)
Growth due to increased prosecutions	+ 19,000	(38.0)	+ 36,000	(47.4)
Growth due to anti-drug law	+ 24,000	(48.0)	+ 30,000	(39.5)
Growth due to career offender law	+ 4,000	(8.0)	+ 6,000	(7.9)
Growth due to guidelines	+ 3,000	(6.0)	+ 4,000	(5.3)
Total growth	+ 50,000	(100.0)	+ 76,000	(100.0)

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General Accounting Office
Washington, D.C. 20548

POTENTIAL COST OF NEW PRISON SPACE
1997 POSSIBILITIES

	Estimated total Population	Net capacity (20% overcrowd)	Needed new capacity[1]	Cost (billions)[2]
BOP	76,000	63,300	28,800	$1.90
Sent. Comm. Low Growth				
Low end	78,000	65,000	30,500	2.01
High end	98,000	81,700	47,200	3.12
Sent. Comm. High Growth				
Low end	100,000	83,300	48,800	3.22
High end	125,000	104,200	69,700	4.60

[1]Net capacity less currently authorized capacity of 34,500.

[2]Needed new capacity multiplied by BOP average cost of $66,000/Bed.

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POTENITAL INCREASE IN PRISON
OPERATING COSTS
1997 POSSIBILITIES

	Estimated total Population	Current Population	Population Increase	Cost Increase (in millions)
BOP	76,000	42,000	34,000	$ 445
Sent. Comm. Low growth				
Low end	78,000	42,000	36,000	472
High end	98,000	42,000	56,000	734
Sent. Comm. High growth				
Low end	100,000	42,000	58,000	760
High end	125,000	42,000	83,000	1,087

Population increase times 1986 average operating cost of $13,100 per inmate.

Department of Justice

STATEMENT

OF

J. MICHAEL QUINLAN
DIRECTOR, FEDERAL BUREAU OF PRISONS

BEFORE

THE

SUBCOMMITTEE ON FEDERAL SPENDING,
BUDGET AND ACCOUNTING
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

CONCERNING

THE FEDERAL PRISON SYSTEM

ON

JULY 21, 1987

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss a situation of growing concern to the Attorney General and myself -- namely, Federal prison overcrowding.

Today, the Federal inmate population is approximately 43,500; an increase of over 19,000 inmates in the past six and one-half years. This represents an 83 percent increase and is concrete evidence of the continuing success of the Administration's Federal law enforcement programs. It is also important to note that -- while our population has substantially grown -- the offense mixture of our inmate population is changing. In 1970, only 16 percent of our inmate population were confined for drug law violations. Over the next decade through 1980, this percentage increased to 25 percent. In only the last six years, the Administration's law enforcement priorities have increased the percentage of drug traffickers in our total population to 37 percent. We anticipate that this percentage will continue to go up, particularly in light of the Anti-Drug Abuse Act of 1986.

Currently, our 43,500 inmates are housed in prison facilities that by contemporary correctional standards should

confine 28,000 inmates, a system-wide overcrowded rate of 56 percent. Some individual institutions are overcrowded by more than 100 percent. As you know, Mr. Chairman, prison overcrowding is commonly related to an increased potential for inmate idleness, unrest and litigation. It has been judged as a major contributing factor in some of the worst state prison disturbances.

The current level of prison overcrowding coupled with substantial growth in the future prison population can create a crisis of major proportions in the Federal criminal justice system. In order to preclude this result and insure the future viability of the Federal Prison System, the Attorney General has established a major objective for the Bureau of Prisons. Simply stated, the objective is to expand the capacity of the Federal Prison System to keep pace with projected increases in the inmate population and to simultaneously reduce prison overcrowding. This is reflected in the President's FY 1988 budget.

This Administration and the Congress have strongly supported the current facilities expansion program which has been the largest in Bureau of Prisons' history. Since 1981,

the system's capacity has been increased by approximately 4,500 beds through the construction of new housing units at existing prisons, the acquisition and conversion of existing properties to correctional facilities and the construction and activation of new prisons. In addition to these projects, the Congress has appropriated funds to build seven new prisons and several additions to existing facilities which will house almost 7,000 inmates. Construction has already begun on five of these prisons and sites have been selected for the remaining two. The FY 1988 budget now before the Congress requests construction funds for two more prisons and other expansion projects which will house 2,400 more inmates.

While the expansion program to date has been substantial, it clearly is not sufficient to meet both future population increases and reduce overcrowding. The Bureau of Prisons has recently completed a new multi-year expansion plan. I know that you understand, Mr. Chairman, that I cannot review this plan in detail at this time since it is now under review in the Executive Branch as part of the formulation of the President's FY 1989 budget.

However, I can note that the inmate population projection upon which our plan is based is similar to the low range

estimates recently submitted to the Congress by the U.S. Sentencing Commission. The Bureau of Prisons has worked closely with the Commission in the development of its projection model. While recognizing the inherent difficulties of any prison projection methodology, I believe that the range of estimates made by the Commission and their underlying policy assumptions are reasonable.

While it is impossible to exactly predict the future Federal prison population, I believe that everyone here today will agree that it will continue to increase -- it is only the degree of growth that is in question. I concur with the Sentencing Commission's position that a major portion of the increases projected by the Commission is not dependent on implementation of the guidelines. Rather, it will result from enhanced Federal investigative and prosecutorial resources already in place and the increased criminal sanctions of the Anti-Drug Abuse Act of 1986.

Mr. Chairman, you have correctly noted that substantial budget resources will be necessary to continue the expansion of the Federal Prison System. In this context, I understand that further hearings may focus in detail on alternatives to new

prison construction including increased use of half-way houses, the recent development of electronic devices used in so-called "house arrest" programs and potential use of prisons operated by private sector firms. I want to assure you and the members of this Subcommittee that we are extremely sensitive to the objective of meeting our mission in the most cost-effective manner. We are actively using most of these options at this time and plan to increase their use. However, it is clear to me that public safety will dictate that the majority of our expansion needs will require the construction of new Federal Correctional Institutions.

The Bureau of Prisons has taken several actions to insure that new prison construction is as cost effective as possible. These actions include the use of Federal surplus property or the donation of land to the government at no cost and the use of already proven prison designs and new construction techniques. The design of Federal correctional facilities and use of new security technology is also responsible for prison staffing requirements that are less than occur in most state correctional systems. This is extremely important since construction costs are less than 10 percent of a prison's total "life cycle" cost.

Another area of prison system expansion which is cost effective is the use of military facilities. Several current Bureau of Prisons facilities are located on former military bases and two of our minimum security Federal Prison Camps operate on active bases with outstanding success and cooperation. In this context, we are extremely pleased about Secretary Weinberger's report to the Attorney General in response to Section 1606 of the Anti-Drug Abuse Act. Over the past several weeks, we have carefully analyzed the military facilities identified in this report and believe that several of them can be used by the Bureau of Prisons.

Mr. Chairman, I recognize that the prison expansion program required to meet our objectives is an undertaking of substantial dimensions, both in terms of human and financial resources. It is equally clear that failure to achieve the objective can result in prison overcrowding that could seriously jeopardize the life and safety of Bureau of Prisons staff and inmates. This type of a crisis could quickly lead to "gridlock" in the Federal criminal justice system inviting court intervention and the establishment of prison population "caps", a situation which has occurred in several state correctional systems.

In closing, Mr. Chairman, I want to state that you and several members of this Subcommittee have always recognized the difficult challenges faced daily by the line staff of the Federal Bureau of Prisons. We are extremely appreciative of you and your colleagues' support.

This concludes my prepared statement, Mr. Chairman. I would be pleased to respond to any questions you or your colleagues may have.

STATEMENT OF

LIEUTENANT GENERAL ANTHONY LUKEMAN, U.S. MARINE CORPS
DEPUTY ASSISTANT SECRETARY OF DEFENSE
MILITARY MANPOWER AND PERSONNEL POLICY

BEFORE THE
SUBCOMMITTEE ON FEDERAL SPENDING, BUDGET, AND ACCOUNTING
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

ON USE OF MILITARY FACILITIES FOR CONFINEMENT OF
FEDERAL CIVILIAN PRISONERS

JULY 21, 1987

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to present the views of the Department of Defense on the issue of the use of military facilities and property for the confinement or detention of federal civilian prisoners.

The Immigration Reform Act of 1986 and the Anti-Drug Abuse Act of 1986 required the Secretary of Defense to provide the Attorney General (with copy to Congress) a list of DoD facilities that could possibly be used for detaining deportable aliens and incarcerating federal civilian felons. Additionally, the Defense Authorization Act for Fiscal Year 1987 required the Secretary to supply the HASC and SASC a list of facilities, not otherwise needed by DoD, suitable for detention of Marielito criminal aliens. The Secretary provided the Attorney General and the Senate and House Armed Services Committees a consolidated report dated January 29, 1987 satisfying these three statutory requirements.

The report, which is based upon input received from the Military Departments, lists buildings and other real property, not presently needed for use by the Services, at military installations throughout the country. The report also describes the military correctional facilities currently in operation. We have identified three correctional facilities -- at Fort Gordon, GA; Fort Indiantown Gap, PA; and Fort Polk, LA -- tentatively targeted for deactivation, that may have utility as civilian detention facilities. The Military Services have no other correctional facilities in excess of their needs.

The Department of Defense opposes comingling civilian and military prisoners. Military readiness would be seriously impaired by the presence of civilian prisoners in military prisons, particularly because of the resulting interference that would result with the effective application of military discipline to educate, train, and rehabilitate offenders for return to effective military service. The purpose and nature of military discipline is incompatible with the objectives of civilian incarceration. Insofar as Service members might be required to guard or police civilian prisoners, comingling would also violate the Posse Comitatus Act.

The Department of Defense, however, has consistently cooperated in efforts to help alleviate the federal prison overcrowding problem. For example, the Branch U.S. Disciplinary Barracks at Lompoc, California was turned over to the Federal Bureau of Prisons in 1959 under a revocable permit. This facility continues to be operated as the U.S. Penitentiary, Lompoc. Several abandoned military installations are now used as Bureau of Prisons correctional facilities, and civilian detention camps are in operation on active military installations at Eglin AFB, Florida, and Maxwell AFB, Alabama. A similar facility will soon be established at Tyndall AFB, Florida.

The Departments of Defense and Justice, the Bureau of

Prisons, the Immigration and Naturalization Service, the U.S. Marshals Service and the Office of Management and Budget have conducted on-going studies and discussions of the suitability of military facilities listed in the January 1987 report for detention of civilian prisoners. DoD is expecting the Department of Justice to submit a formal request identifying properties listed in our report that have potential as civilian confinement or detention facilities. Once the DoJ request is received, the Office of the Secretary of Defense will coordinate with the Military Departments to determine whether the identified facilities may effectively be converted to the uses desired, without thereby impairing installation readiness, security, or mission accomplishment.

While the Department of Defense is committed to help in alleviating the prison overcrowding problem in any way consistent with law and national security interests, it is necessary to add that conversion of underutilized DoD facilities suitable for detaining civilian prisoners will not in itself significantly reduce federal prison overcrowding in the long run. Those facilities are potentially part of the solution to this serious and complex problem, but a relatively minor part.

Mr. Chairman, this concludes my formal statement. I am prepared to answer your questions.

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